



Ontario
Ministry of
Labour

A Guide to the Employment Standards Act

Government
Publications

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EMPLOYMENT STANDARDS



JANUARY 1994

A Guide to the Employment Standards Act

Contents

Section

1. who is covered by the Act and its general application
2. hours of work
3. minimum wage
4. homeworkers
5. public holidays
6. overtime pay
7. vacation pay
8. equal pay for equal work
9. benefit plans
10. pregnancy and parental leave
11. notice of termination
12. severance pay
13. payments on termination
14. wage protection program
15. agricultural workers
16. domestics
17. lie detectors
18. retail business establishments
19. general administration

Other publications available in English and French:

- If You Are a Domestic Worker or If You Employ Domestics In Your Home.
- Key Provisions under the Employment Standards Act for Operators of Tourist Resorts and Hunting and Fishing Camps.
- Does the place where you worked owe you money?
- Ontario's Employee Wage Protection Program: A Guide for Employers.
- Employment Standards Fact Sheets on:
 - How to File a claim
 - Pregnancy Leave
 - Parental Leave
 - Public Holidays
 - Vacation
 - Termination
 - Severance

Le présent guide est également
disponible en français.

New Ontario Minimum Wage Regulations

The following new minimum wage rates take effect at the beginning of the first week of January, 1994:

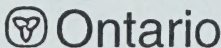
	New Rate	Previous Rate
General (including domestics and harvest workers)	\$6.70*	(6.35)
Students under 18	6.25*	(5.90)
Liquor servers	5.80*	(5.50)
Hunting/fishing guides	67.00**	(63.50)
Hunting/fishing guides	33.50#	(31.75)

*hourly rate; **5 or more hour day; # less than 5 hours.

Maximum room and meal allowances in calculating the minimum wage, applicable to general workers at the beginning of January, 1994 are:

Room – private (weekly)	31.00	(29.40)
– non-private (weekly)	15.50	(14.70)
Meals – (each)	2.50	(2.35)
– (weekly)	52.50	(49.35)
Room & meals (weekly)		
– with private room	83.50	(78.75)
– non-private lodging	68.00	(64.05)
Housing (weekly) for harvest workers only		
– serviced	97.15	(92.10)
– unserviced	71.70	(67.95)

*For more information, contact your local Ministry of
Labour office.*



1. General Coverage and Application

— Who's Covered

The *Employment Standards Act* applies to employees and employers in the Province of Ontario. It does not apply to police officers or to persons employed in industries under the jurisdiction of the federal government, such as post offices, railways, airlines, banks, grain elevators, shipping companies, and radio and television stations. Nor do the parts of the Act relating to hours of work, minimum wage, overtime pay, public holidays and vacation pay apply to:

- a) qualified practitioners of: architecture, chiropody, dentistry, law, medicine, optometry, pharmacy, professional engineering, psychology, public accounting, surveying or veterinary science;
- b) a registered drugless practitioner;
- c) a teacher as defined in the *Teaching Profession Act*;
- d) a student training for the professions mentioned above;
- e) a person engaged in commercial fishing;
- f) a domestic servant employed directly by the householder who works 24 hours or less in a week (see bulletin on domestics);
- ff) a babysitter employed to attend primarily to the needs of a child or a companion (see bulletin on domestics);
- g) a registered real estate salesperson;
- h) Crown employees;
- i) a salesperson other than a route salesperson receiving commissions who sells away from the employer's establishment;
- j) a person employed on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, pigs, cattle, sheep and poultry. Special conditions apply to persons employed in the harvesting of fruit, vegetables and tobacco, as set out in item 15 of this bulletin.

A person employed in landscape gardening, mushroom growing, the growing of flowers, trees or shrubs for the retail and wholesale trade, the growing, transporting and laying of sod, the boarding and breeding of horses or the keeping of fur bearing animals as defined in the *Fur Farms Act* is entitled to minimum wages and vacation pay for all of their work. Overtime pay, public holiday pay and the limitations of hours of work do not apply to these workers.

2. Hours of Work

An employee shall not work more than eight hours a day or 48 hours a week. The director of Employment Standards may, in writing, approve a regular work day of more than eight hours but not in excess of 12 hours, where the employees and the employer jointly agree on the arrangement.

Any employer wishing employees to work more than eight hours a day or 48 hours in a week, must apply to the director of Employment Standards for a permit. Such a permit may then be issued at the director's discretion.

Although an employer has a permit allowing extra hours, an employee cannot be required to work over eight hours in a day, or 48 hours in a week, without the consent of the employee or the employee's agent, except in the case of an emergency.

A permit allowing extra hours does not relieve the employer from the requirement to pay overtime pay as required by the Act and regulations.

An employee may not work more than five consecutive hours without receiving at least a one-half hour eating period.

These standards on *hours of work* do not apply to those persons exempted in Part 1 of this bulletin, as well as:

- a) employees whose only work is supervisory or managerial;
- b) a full-time firefighter as defined in the *Fire Departments Act*;
- c) a person employed as a fishing or hunting guide;
- d) a person employed in construction;
- e) a person performing homework;
- f) a superintendent of a residential building who resides in the building;
- g) an embalmer or a funeral director;
- h) a homemaker;
- i) a domestic servant employed directly by the householder;
- j) a residential care worker (Residential care workers are covered by a special regulation under the Act. A brochure outlining their rights is available).

3

3. Minimum Wage

	Jan. 1/94	Nov. 1/92
<i>General</i> , hourly rate (including domestics)	\$6.70	\$6.35
Hourly rate for persons employed to serve liquor directly to customers in licensed premises	5.80	5.50
<i>Student</i> , hourly rate This rate applies to students under 18 who: work not more than 28 hours per week during the school term, or work more or less than 28 hours per week during school holidays	6.25	5.90
<i>Hunting or Fishing Guides</i>		
a) for less than five consecutive hours	33.50	31.75
b) for five or more hours whether or not such hours are consecutive	67.00	63.50

Homemakers The hours of work in respect of which a homemaker is to be paid at least the general minimum wage shall be not more than 12 hours in a day.

Room and Board (General)

The following maximum rates apply when room and board are included in calculating the *minimum wage*:

	Jan. 1/94	Nov. 1/92
Room (weekly)		
— private	\$31.00	\$29.40
— non-private or shared	15.60	14.70
Meals (each)	2.50	2.35
(weekly maximum)	52.50	49.35
Room and Meals (weekly maximum)		
— private	83.50	78.75
— non-private or shared	68.00	64.05

Employees required to report for work, who work less than three hours, must be paid for at least three hours at the minimum wage, unless they are hired to work less than three hours a day or are students.

Employees exempt from the minimum wage are those exempted in Part 1 of this bulletin as well as:

- a) a student supervising or instructing children;
- b) a student employed at a camp for children;
- c) a student employed in a recreation program operated by a charitable organization;
- d) a superintendent of a residential building who lives in the building;
- e) a person training to be a registered nursing assistant;
- f) a person training as a laboratory technologist or radiological technician.

Note

1. Liquor in the *Liquor Licence Act* is defined as . . . Spirits, wine and beer or any combination thereof and includes any alcohol in a form appropriate for human consumption as a beverage alone or in combination with any other matter.

2. A minimum wage of \$5.80 per hour (effective Jan. 1 /94) applies to a person employed to serve liquor in licensed premises whether or not they actually serve liquor. Premises means that part of the establishment that is licensed and includes a room service situation where the hotel is so licensed, and a place for which a permit has been issued under the *Liquor Licence Act*.

If the work environment is such that a person might serve liquor the rate applies even though on that particular shift the employee did not actually serve liquor. Shifts or pay periods need not be split. If the employee serves liquor for any part of the pay period he/she will receive the minimum rate as shown above for the entire pay period.

4. Homeworkers

No person shall employ a homeworker without a permit issued by the director of Employment Standards.

Where a homeworker is paid on piece-work rates, the rates must be high enough to ensure that the employee is able to earn not less than a minimum wage. Homeworkers are entitled to vacation pay.

Hours of work, public holidays and overtime provisions do not apply to a homeworker. Homeworker does not mean a domestic servant but rather a person doing work at home that would ordinarily be done in a shop or office.

5. Public Holidays

Employees are entitled to eight public holidays *with pay*: New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day.

An employee *does not* qualify for a paid holiday if the employee:

- a) is employed for less than three months;
- b) does not earn wages on twelve days of the four *work weeks* preceding the holiday;
- c) does not work his or her scheduled *regular* day of work preceding or following the holiday;
- d) having agreed to work on a public holiday, does not report for and perform the work without reasonable cause;
- e) is employed under an arrangement where he or she may elect to work or not when requested so to do.

Public holiday benefits apply to full-time, part-time and student employees.

The regular rates of wages of an employee whose hours of work differ from day to day, or who is paid on a basis other than time, shall be the average of the employee's daily earnings exclusive of overtime for the days worked in the 13-week period immediately preceding a public holiday.

Where a public holiday falls upon a working day for an employee, an employer may *with the agreement of the employee or employee's agent*, substitute another working day for the public holiday, which day shall not be later than the next annual vacation of the employee, and the day so

substituted shall be deemed to be the public holiday.

If the holiday falls on a non-working day, the employee shall be given another normal working day off with pay, or, if the employee agrees, the employer will pay the employee the regular wage for the public holiday.

Premium Pay for Working on the Public Holiday

If a qualified employee does not have a substitute arrangement and works on a public holiday, the employee must be paid at least time and one-half the regular rate for those hours worked, in addition to the employee's regular day's pay for that public holiday.

Where an employee is employed in a *hotel, motel, tourist resort, restaurant, tavern, continuous operation, or a hospital*, and the employee is required to work on a public holiday, the employer may pay the employee regular wages for work done on the public holiday and give the employee a day off with pay on the first working day following the employee's annual vacation or any other agreed working day; or the employer shall pay the employee for each hour worked, a premium of no less than one and one-half the employee's regular rate, in addition to the employee's regular wages for the public holiday.

An employee who *does not qualify* for a paid holiday must be paid at least time and one-half the employee's regular rate for each hour worked on: New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day.

No public holiday pay is required for those persons exempted in Part 1 of this bulletin as well as:

- a) a full-time firefighter as defined in the *Fire Departments Act*;
- b) fishing or hunting guides;
- c) homeworkers;
- d) a student supervising children;
- e) a student employed at a camp for children;
- f) a student employed in a recreation program operated by a charitable organization;
- g) a superintendent of a residential building who lives in the building;

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- h) a taxi driver;
 - i) a seasonal employee in a hotel, motel, tourist resort, restaurant or tavern who is provided with room and board;
 - j) a person employed in construction and receiving seven per cent or more of the hourly rate or wages for vacation pay or holiday pay.

6. Overtime Pay

With certain exceptions, at least time and one-half the regular rate must be paid after 44 hours in a week.

The *regular rate* is the wage rate for an hour of work in a regular non-overtime work week; or if this is not specified, then the *regular rate* is the average hourly rate calculated by dividing the wages of an employee earned in a week by the number of hours the employee worked in that week.

The hours an employee has worked on a public holiday, for which the employee received premium pay, are not included for the purpose of calculating overtime pay for the same work week (see examples).

There is no provision in the Act for overtime pay on a daily basis.

Overtime benefits apply to full-time, part-time and student employees.

Special regulations for overtime pay apply to employees working in: sewer and watermain construction industry; road building industry; local cartage industry; seasonal employees in hotel, tourist resort, restaurant and tavern industry; highway transport industry; seasonal employees in fruit and vegetable processing industry; and some domestics. (See bulletin on domestics.)

The director of Employment Standards may approve an arrangement or agreement between the employer and the employees or their agent for the averaging of hours of work over a period of two or more weeks for overtime pay purposes.

Generally speaking, the averaging agreement should involve a regular work schedule established for the averaging period.

No overtime pay is required for those persons exempted in Part 1 of this bulletin as well as:

- a) a full-time firefighter as defined in the *Fire Departments Act*;
- b) an employee whose only work is managerial or supervisory in character;
- c) fishing or hunting guides;
- d) homeworkers;
- e) a student supervising children;
- f) a student employed at a camp for children;
- g) a student employed in a recreation program operated by a charitable organization;

- h) a superintendent of a residential building who lives in the building;
- i) a taxi driver;
- j) a homemaker;
- k) an ambulance driver, ambulance driver's helper or first aid attendant on an ambulance;
- l) some domestics (See bulletin on domestics);
- m) residential care workers.

Computing Overtime, Premium, and Public Holiday Pay

Example 1: Week in which there is no public holiday

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	= 53
0	8	12	9	8	8	8	hours
Rate \$8.00 per hour							
Regular				44×8.00	=		352.00
Overtime pay				9×12.00	=		108.00
Actual hours worked:					53		\$460.00

Example 2: Qualified employee in week of public holiday

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	= 45
0	(0)	12	9	8	8	8	hours
Rate \$8.00 per hour							
Monday is a public holiday							
Public holiday pay				(8×8.00)	=		64.00
Regular				44×8.00	=		352.00
Overtime pay				1×12.00	=		12.00
Actual hours worked:					45		\$428.00

Example 3: Employee qualified for public holiday pay

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	= 53
0	(8)	12	9	8	8	8	hours
Rate \$8.00 per hour							
Monday is a public holiday							
Public holiday pay				(8×8.00)	=		64.00
Premium holiday pay				(8×12.00)	=		96.00
Regular				44×8.00	=		352.00
Overtime pay				1×12.00	=		12.00
Actual hours worked:					53		\$524.00

Example 4: Employee not qualified for public holiday pay

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	= 53
0	(8)	12	9	8	8	8	hours

Rate \$8.00 per hour

Monday is a public holiday

Premium holiday pay	(8 × 12.00)	=	96.00
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Regular	44 × 8.00	=	352.00
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Overtime pay	1 × 12.00	=	12.00
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Actual hours worked:	53	\$460.00
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7. Vacation Pay

After 12 months of employment, employees are entitled to two weeks' vacation with pay. The vacation pay must be at least four per cent of the total wages for the year for which the vacation is given.

An employee who terminates before completing one year of service, must receive four per cent of total wages calculated from the first day employed.

Total wages include all money received by an employee from the employer, as well as the value of room and board as set out in the regulations, but does not include:

- a) tips and gratuities;
- b) any money paid to an employee solely at the discretion of the employer and not based on any performance over which the employee has control;
- c) expenses and travel allowances;
- d) money paid on behalf of employees to benefit plans;
- e) previously paid vacation pay.

The employer shall decide when the vacation is given. It may be a two-week period or two periods of one week each. The two weeks' vacation must be given within 10 months after the employee has earned it.

The employee's vacation pay entitlement must be paid within one week of termination of employment.

Vacation pay benefits apply to full-time, part-time and student employees.

No vacation pay is required for those persons exempted in Part 1 of this bulletin as well as:

- a) a person training to be a registered nursing assistant;
- b) a person training as a laboratory technologist or medical radiation technologist.

8. Equal Pay for Equal Work

No employer or person acting on behalf of an employer shall differentiate between male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee, or vice versa, for *substantially* the same kind of work performed in the same establishment, the performance of which requires *substantially* the same skill, effort and responsi-

A person employed in landscape gardening, mushroom growing, the growing of flowers, trees or shrubs for the retail and wholesale trade, the growing, transporting and laying of sod, the boarding and breeding of horses or the keeping of fur bearing animals as defined in the *Fur Farms Act* is entitled to minimum wages and vacation pay for all of their work. Overtime pay, public holiday pay and the limitations of hours of work do not apply to these workers.

2. Hours of Work

An employee shall not work more than eight hours a day or 48 hours a week. The director of Employment Standards may, in writing, approve a regular work day of more than eight hours but not in excess of 12 hours, where the employees and the employer jointly agree on the arrangement.

Any employer wishing employees to work more than eight hours a day or 48 hours in a week, must apply to the director of Employment Standards for a permit. Such a permit may then be issued at the director's discretion.

Although an employer has a permit allowing extra hours, an employee cannot be required to work over eight hours in a day, or 48 hours in a week, without the consent of the employee or the employee's agent, except in the case of an emergency.

A permit allowing extra hours does not relieve the employer from the requirement to pay overtime pay as required by the Act and regulations.

An employee may not work more than five consecutive hours without receiving at least a one-half hour eating period.

These standards on *hours of work* do not apply to those persons exempted in Part 1 of this bulletin, as well as:

- a) employees whose only work is supervisory or managerial;
- b) a full-time firefighter as defined in the *Fire Departments Act*;
- c) a person employed as a fishing or hunting guide;
- d) a person employed in construction;
- e) a person performing homework;
- f) a superintendent of a residential building who resides in the building;
- g) an embalmer or a funeral director;
- h) a homemaker;
- i) a domestic servant employed directly by the householder;
- j) a residential care worker (Residential care workers are covered by a special regulation under the Act. A brochure outlining their rights is available).

3. Minimum Wage

	Jan. 1/94	Nov. 1/92
<i>General</i> , hourly rate (including domestics)	\$6.70	\$6.35
Hourly rate for persons employed to serve liquor directly to customers in licensed premises	5.80	5.50
<i>Student</i> , hourly rate This rate applies to students under 18 who: work not more than 28 hours per week during the school term, or work more or less than 28 hours per week during school holidays	6.25	5.90
<i>Hunting or Fishing Guides</i>		
a) for less than five consecutive hours	33.50	31.75
b) for five or more hours whether or not such hours are consecutive	67.00	63.50

Homemakers The hours of work in respect of which a homemaker is to be paid at least the general minimum wage shall be not more than 12 hours in a day.

Room and Board (General)

The following maximum rates apply when room and board are included in calculating the *minimum wage*:

	Jan. 1 /94	Nov. 1 /92
Room (weekly)		
— private	\$31.00	\$29.40
— non-private or shared	15.60	14.70
Meals (each)	2.50	2.35
(weekly maximum)	52.50	49.35
Room and Meals (weekly maximum)		
— private	83.50	78.75
— non-private or shared	68.00	64.05

Employees required to report for work, who work less than three hours, must be paid for at least three hours at the minimum wage, unless they are hired to work less than three hours a day or are students.

Employees exempt from the minimum wage are those exempted in Part 1 of this bulletin as well as:

- a) a student supervising or instructing children;
- b) a student employed at a camp for children;
- c) a student employed in a recreation program operated by a charitable organization;
- d) a superintendent of a residential building who lives in the building;
- e) a person training to be a registered nursing assistant;
- f) a person training as a laboratory technologist or radiological technician.

Note

1. Liquor in the *Liquor Licence Act* is defined as . . . Spirits, wine and beer or any combination thereof and includes any alcohol in a form appropriate for human consumption as a beverage alone or in combination with any other matter.

2. A minimum wage of \$5.80 per hour (effective Jan. 1 /94) applies to a person employed to serve liquor in licensed premises whether or not they actually serve liquor. Premises means that part of the establishment that is licensed and includes a room service situation where the hotel is so licensed, and a place for which a permit has been issued under the *Liquor Licence Act*.

If the work environment is such that a person might serve liquor the rate applies even though on that particular shift the employee did not actually serve liquor. Shifts or pay periods need not be split. If the employee serves liquor for any part of the pay period he/she will receive the minimum rate as shown above for the entire pay period.

4. Homeworkers

No person shall employ a homeworker without a permit issued by the director of Employment Standards.

Where a homeworker is paid on piece-work rates, the rates must be high enough to ensure that the employee is able to earn not less than a minimum wage. Homeworkers are entitled to vacation pay.

Hours of work, public holidays and overtime provisions do not apply to a homeworker. Homeworker does not mean a domestic servant but rather a person doing work at home that would ordinarily be done in a shop or office.

5. Public Holidays

Employees are entitled to eight public holidays *with pay*: New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day.

An employee *does not* qualify for a paid holiday if the employee:

- a) is employed for less than three months;
- b) does not earn wages on twelve days of the four *work weeks* preceding the holiday;
- c) does not work his or her scheduled *regular* day of work preceding or following the holiday;
- d) having agreed to work on a public holiday, does not report for and perform the work without reasonable cause;
- e) is employed under an arrangement where he or she may elect to work or not when requested so to do.

Public holiday benefits apply to full-time, part-time and student employees.

The regular rates of wages of an employee whose hours of work differ from day to day, or who is paid on a basis other than time, shall be the average of the employee's daily earnings exclusive of overtime for the days worked in the 13-week period immediately preceding a public holiday.

Where a public holiday falls upon a working day for an employee, an employer may *with the agreement of the employee or employee's agent*, substitute another working day for the public holiday, which day shall not be later than the next annual vacation of the employee, and the day so

substituted shall be deemed to be the public holiday.

If the holiday falls on a non-working day, the employee shall be given another normal working day off with pay, or, if the employee agrees, the employer will pay the employee the regular wage for the public holiday.

Premium Pay for Working on the Public Holiday

If a qualified employee does not have a substitute arrangement and works on a public holiday, the employee must be paid at least time and one-half the regular rate for those hours worked, in addition to the employee's regular day's pay for that public holiday.

Where an employee is employed in a *hotel, motel, tourist resort, restaurant, tavern, continuous operation, or a hospital*, and the employee is required to work on a public holiday, the employer may pay the employee regular wages for work done on the public holiday and give the employee a day off with pay on the first working day following the employee's annual vacation or any other agreed working day; or the employer shall pay the employee for each hour worked, a premium of no less than one and one-half the employee's regular rate, in addition to the employee's regular wages for the public holiday.

An employee who *does not qualify* for a paid holiday must be paid at least time and one-half the employee's regular rate for each hour worked on: New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day.

No *public holiday pay* is required for those persons exempted in Part 1 of this bulletin as well as:

- a) a full-time firefighter as defined in the *Fire Departments Act*;
- b) fishing or hunting guides;
- c) homeworkers;
- d) a student supervising children;
- e) a student employed at a camp for children;
- f) a student employed in a recreation program operated by a charitable organization;
- g) a superintendent of a residential building who lives in the building;

-
-) a taxi driver;
 -) a seasonal employee in a hotel, motel, tourist resort, restaurant or tavern who is provided with room and board;
 -) a person employed in construction and receiving seven per cent or more of the hourly rate or wages for vacation pay or holiday pay.

6. Overtime Pay

With certain exceptions, at least time and one-half the regular rate must be paid after 44 hours in a week.

The *regular rate* is the wage rate for an hour of work in a regular non-overtime work week; or if this is not specified, then the *regular rate* is the average hourly rate calculated by dividing the wages of an employee earned in a week by the number of hours the employee worked in that week.

The hours an employee has worked on a public holiday, *for which the employee received premium pay*, are not included for the purpose of calculating overtime pay for the same work week (see examples).

There is no provision in the Act for overtime pay on a daily basis.

Overtime benefits apply to full-time, part-time and student employees.

Special regulations for overtime pay apply to employees working in: sewer and watermain construction industry; road building industry; local cartage industry; seasonal employees in hotel, tourist resort, restaurant and tavern industry; highway transport industry; seasonal employees in fruit and vegetable processing industry; and some domestics. (See bulletin on domestics.)

The director of Employment Standards may approve an arrangement or agreement between the employer and the employees or their agent for the averaging of hours of work over a period of two or more weeks for overtime pay purposes.

Generally speaking, the averaging agreement should involve a regular work schedule established for the averaging period.

No *overtime pay* is required for those persons exempted in Part 1 of this bulletin as well as:

- a) a full-time firefighter as defined in the *Fire Departments Act*;
- b) an employee whose only work is managerial or supervisory in character;
- c) fishing or hunting guides;
- d) homeworkers;
- e) a student supervising children;
- f) a student employed at a camp for children;
- g) a student employed in a recreation program operated by a charitable organization;

- h) a superintendent of a residential building who lives in the building;
- i) a taxi driver;
- j) a homemaker;
- k) an ambulance driver, ambulance driver's helper or first aid attendant on an ambulance;
- l) some domestics (See bulletin on domestics);
- m) residential care workers.

Computing Overtime, Premium, and Public Holiday Pay

Example 1: Week in which there is no public holiday

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	=	53
0	8	12	9	8	8	8		hours
Rate \$8.00 per hour								
Regular				44 × 8.00		=	352.00	
Overtime pay				9 × 12.00		=	108.00	
Actual hours worked:					53		\$460.00	

Example 2: Qualified employee in week of public holiday

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	=	45
0	(0)	12	9	8	8	8		hours
Rate \$8.00 per hour								
Monday is a public holiday								
Public holiday pay				(8 × 8.00)		=	64.00	
Regular				44 × 8.00		=	352.00	
Overtime pay				1 × 12.00		=	12.00	
Actual hours worked:					45		\$428.00	

Example 3: Employee qualified for public holiday pay

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	=	53
0	(8)	12	9	8	8	8		hours
Rate \$8.00 per hour								
Monday is a public holiday								
Public holiday pay				(8 × 8.00)		=	64.00	
Premium holiday pay				(8 × 12.00)		=	96.00	
Regular				44 × 8.00		=	352.00	
Overtime pay				1 × 12.00		=	12.00	
Actual hours worked:					53		\$524.00	

Example 4: Employee not qualified for public holiday pay

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	= 53
0	(8)	12	9	8	8	8	hours

Rate \$8.00 per hour

Monday is a public holiday

Premium holiday pay $(8 \times 12.00) =$ 96.00

Regular $44 \times 8.00 =$ 352.00

Overtime pay $1 \times 12.00 =$ 12.00

Actual hours worked: 53 \$460.00

7. Vacation Pay

After 12 months of employment, employees are entitled to two weeks' vacation with pay. The vacation pay must be at least four per cent of the total wages for the year for which the vacation is given.

An employee who terminates before completing one year of service, must receive four per cent of total wages calculated from the first day employed.

Total wages include all money received by an employee from the employer, as well as the value of room and board as set out in the regulations, but does not include:

- a) tips and gratuities;
- b) any money paid to an employee solely at the discretion of the employer and not based on any performance over which the employee has control;
- c) expenses and travel allowances;
- d) money paid on behalf of employees to benefit plans;
- e) previously paid vacation pay.

The employer shall decide when the vacation is given. It may be a two-week period or two periods of one week each. The two weeks' vacation must be given within 10 months after the employee has earned it.

The employee's vacation pay entitlement must be paid within one week of termination of employment.

Vacation pay benefits apply to full-time, part-time and student employees.

No vacation pay is required for those persons exempted in Part 1 of this bulletin as well as:

- a) a person training to be a registered nursing assistant;
- b) a person training as a laboratory technologist or medical radiation technologist.

8. Equal Pay for Equal Work

No employer or person acting on behalf of an employer shall differentiate between male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee, or vice versa, for *substantially* the same kind of work performed in the same establishment, the performance of which requires *substantially* the same skill, effort and responsi-

bility and which is performed under similar working conditions, except where such payment is made pursuant to:

- a) a seniority system;
 - b) a merit system;
 - c) a system that measures earnings by quantity or quality of production; or
 - d) a differential based on any factor other than sex.
-

What Does it Mean to the Employer?

1. *Q What does equal pay mean?*

A If persons of opposite sex are performing substantially the same work in the same establishment under similar working conditions, you cannot pay them less because of sex only.

2. *Q When was the Equal Pay Act put into effect?*

A Initially in 1951 under the *Female Employees Fair Remuneration Act*, which was incorporated in 1962 into the *Human Rights Code* and on January 1, 1969 into the *Employment Standards Act*.

3. *Q Does this law apply to males as well as females?*

A Yes.

4. *Q If two persons of the same sex do the same work, and one is paid less than the other, could that employee make a claim for equal pay?*

A No — comparisons may only be made between persons of opposite sex.

5. *Q Does the work have to be exactly the same?*

A No — where the work is substantially similar an equal pay situation may exist.

-
6. Q *Can a person of one sex doing the same work as a person of the opposite sex be paid less for any reason?*
- A Yes — provided it is because of a factor other than sex, i.e., a seniority system, a merit system or a system that measures earnings by quality or quantity of production, i.e., piece work.
7. Q *If work done by one sex is different than the work done by persons of the opposite sex, but is worth as much to the company, could there be a claim?*
- A No — the *Employment Standards Act* applies only to equal pay for equal work, not to work of equal value. However, the *Pay Equity Act* applies to equal pay for work of equal value. Inquiries regarding equal value should be directed to the Pay Equity Commission, 150 Eglinton Ave. E., 5th Floor, Toronto, Ontario M4P 1E8
Phone: 481-3314.
8. Q *Should a female working as a sales clerk in the ladies' wear department receive the same pay as a man working as a sales clerk in the men's wear department?*
- A Yes — providing the work done is substantially the same as that of the higher paid person, requiring equal skill, effort and responsibility and performed under similar working conditions.
9. Q *Can a claim under equal pay be made if an employer will not allow a female employee to apply for a higher paying job performed by a male?*
- A No — however, the *Humans Rights Code* prohibits such discrimination in employment practices on the basis of sex. The employee should contact the local Human Rights Office. If the higher paying job is of equal value to the female employee's job, she can contact the Pay Equity Commission.

10. Q *Are names revealed to employers if claims are filed?*

A No — names are not revealed without permission.

11. Q *Can a person be fired because a claim is made for equal pay?*

A No — the employer is prohibited from firing or in any way penalizing an employee who has either filed a claim or participated in the investigation because the employee filed a claim or participated in the investigation.

12. Q *If a claim is successful, could an employer reduce the wages of a higher rated person of the opposite sex, rather than give the lower rated person a raise?*

A No — an employer may not reduce the wages of an employee in order to comply with the Act.

13. Q *Does Equal Pay for Equal Work apply to all types of business and industry?*

A Yes — with the exception of employees under federal government legislation, who are protected under the *Canada Labour Code*.

14. Q *Do qualifications or experience make the difference when deciding equal pay cases?*

A In most cases, qualifications or experience make the difference only when related to the work actually being performed. Under certain circumstances, where the employer has specific plans for the utilization of an employee's special skills, it could possibly make the difference, even though the work actually being performed is substantially the same.

15. Q *If, since being hired, more duties are given to the female employee, so that the work now being done is substantially similar to work being done by male employees who are receiving more money, can an employer continue to pay the female employee at the lower rate at which she was hired?*

A No — providing the work done is substantially the same as that of the higher paid person, requiring substantially the same skill, effort and responsibility and is performed under similar working conditions and is not based on a seniority system, merit system or a piece-work system, or on a factor other than sex.

16. Q *What is skill?*

A Skill is the ability and qualifications to apply oneself to the job. Skill includes consideration of such factors as experience, training and education.

17. Q *What is effort?*

A Effort is the measurement of the physical or mental exertion needed for the performance of the job.

18. Q *What is responsibility?*

A Responsibility is the degree of accountability required in the performance of the job.

19. Q *What is an establishment?*

A An establishment is a location where the employer carries on business. If the employer carries on business at more than one location, the separate locations are considered to be in the same establishment if they are in the same municipality or if there are common bumping rights between the locations.

20. Q *To exclude a person from Equal Pay for Equal Work, must all the exceptions be met (see the Act above)?*

A No — any one exception would exclude a person from Equal Pay for Equal Work.

21. Q *If the job being done by a female requires more skill than the job being done by a male, but the job being done by the male requires much more effort, could there be a claim under Equal Pay?*

A No — under the *Employment Standards Act*, skill cannot be offset by effort, etc. However, the employee can contact the Pay Equity Commission, which has jurisdiction over situations involving equal pay for work of equal value.

22. Q *Could a person be temporarily assigned to a position working with a person of the opposite sex with either a greater or lesser rate of pay?*

A Yes, in emergency situations of short duration or when training an employee.

23. Q *Does equal pay apply to part-time employees and students?*

A Yes — when compared with employees in similar circumstances.

24. Q *Does equal pay apply to persons paid on commissions?*

A Yes.

25. Q *A union agreement provides that female waiters be paid 20¢ an hour less than male waiters working in the same place. Should the female waiters be paid the same as the male waiters?*

A Yes — if the work is the same. That part of the union contract setting separate rates would be invalid.

26. Q *Are all investigations based on complaints?*

A No — routine inspections are conducted.

27. Q *How can employees and employers get more information?*

A Contact the nearest Ministry of Labour area or district office.

28. Q *How can a complaint be made?*

A By personal visit, phoning or writing a letter to your nearest Ministry of Labour area or district office.

9. Benefit Plans

No employer can differentiate between employees or classes of employees or their beneficiaries because of *age*, *sex* or *marital* status, concerning a fund, or plan, offered to employees by an employer as a condition of employment, or as a voluntary plan, subject to certain exceptions.

This applies to plans that provide for superannuation, retirement, unemployment, income replacement, death, disability, sickness, accident, or medical, hospital, nursing or dental expenses, or other similar benefits. Benefits under a deferred profit sharing plan, where profits are permitted to be withdrawn or distributed upon death, or retirement, or some other contingency, are also included.

10. Pregnancy and Parental Leave

On December 20, 1990, Bill 14, a Bill to amend the *Employment Standards Act* respecting pregnancy and parental leave, became law in Ontario. In addition to the 17-week pregnancy leave for mothers, the new law provides each working parent with 18 weeks of unpaid parental leave to care for newborn and newly adopted children.

An employee who is entitled to take a pregnancy or parental leave cannot be terminated or laid off, disciplined or suspended because he or she is so entitled, or has, in fact, applied for or taken such leave.

All of the new provisions, except the rights to accrual of seniority and continuation of benefits during pregnancy and parental leave, are retroactive to, and including, November 18, 1990.

Special provisions concerning rights to leave applied during the transitional period November 18 1990 to and including December 19, 1990.

Seniority for all purposes continues to accrue during pregnancy and parental leaves and, following the leave, the employee must be reinstated to the same position if it still exists, or to a comparable position if it does not. On reinstatement, the employee must be paid at the rate paid when the leave commenced or, if it is higher, at the rate the employee would be earning if he or she had worked through the leave.

While an employee is on pregnancy or parental leave, the employer must continue to make employer contributions to pension, life insurance, accidental death, extended health and dental

plans unless the employee has advised the employer, in writing, that he or she does not wish to continue to make the employee contributions (if any) to such plans.

The pregnancy and parental leave provisions of the Act apply to full-time and part-time employees.

The employer is not required to pay wages to an employee while he or she is on pregnancy or parental leave.

Pregnancy Leave

An employee is entitled to at least 17 weeks of unpaid leave of absence for pregnancy if she has been employed with her employer for at least 13 weeks preceding the estimated day of delivery.

The leave may be commenced up to 17 weeks before the expected date of delivery.

An employee who is entitled to the leave is required to give her employer two weeks' notice in writing of the date the leave is to begin, together with a medical certificate estimating the date of delivery. If the employee does not specify the date of the end of the pregnancy leave, it will be assumed that she wishes to take the maximum leave.

An employee who has given notice to begin a pregnancy leave may change the notice to an earlier date by giving at least two weeks' written notice before the earlier date. She may change to a later date by giving two weeks' notice before the leave was to begin.

If pregnancy-related complications force the employee to stop work before she has arranged her pregnancy leave, she has two weeks from that date to give the employer written notice of the date the pregnancy leave began (e.g., if the child has been born) or when the leave is to begin, with a medical certificate confirming the circumstances and the expected or actual date of birth. An employer cannot force an employee to commence her pregnancy leave because she is ill, even if the illness is pregnancy related.

A pregnancy leave will normally end 17 weeks after it begins, but if the mother suffers a still-birth or miscarriage or if the child dies while the mother is still on her pregnancy leave, the pregnancy leave will end six weeks after the date of the still-birth, miscarriage or birth or 17 weeks after the pregnancy leave commenced, whichever is later.

If the employee has been on her pregnancy leave for 17 weeks but the child has not yet been born, the pregnancy leave will end when the baby is born and the employee will be entitled to take a parental leave immediately after the birth.

If an employee on pregnancy leave wishes to change the date of her return to work to an earlier date, she must give her employer four weeks' written notice of the date on which she intends to return.

If an employee wishes to change the date of return to a later date (but subject to the rules concerning the maximum length of leave), she must give the employer four weeks' written notice before the date the leave was to end.

Parental Leave

An employee who is a parent of a child and who has been employed with his or her employer for at least 13 weeks is entitled to an 18-week unpaid parental leave following the birth of the child or the coming of the child into a parent's custody, care and control for the first time. Both parents will be eligible to take a parental leave, and each parent is eligible to take 18 weeks.

For a natural mother, parental leave commences when her pregnancy leave ends or when the baby first comes into custody, care and control of a parent.

For fathers and adoptive parents, parental leave must commence within 35 weeks after the birth or after the child first comes into the custody, care and control of a parent.

A "parent" includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with the parent of the child and who intends to treat the child as his or her own.

An employee who is entitled to a parental leave is required to give the employer two weeks' written notice prior to the commencement of the leave. If he or she does not specify when the leave will end, it will be assumed that he or she wishes to take the maximum leave.

An employee who has given notice to begin a parental leave may change the notice to an earlier date by giving at least two weeks' notice before the earlier date, or to a later date by giving two weeks' notice before the leave was to begin.

If the employee stops work because the child has arrived earlier than expected, the employee has two weeks from that date to give the employer written notice of his or her intent to take the parental leave.

If an employee on parental leave wishes to change the date of his or her return to work to an earlier date, he or she must give the employer four weeks' written notice of the date on which he or she intends to return.

If an employee wishes to change the date of return to work to a later date (but subject to the 18-week maximum length of leave), the employee must give the employer four weeks' written notice before the date the leave was to end.

11. Notice of Termination

- Employees who have worked three months or more but less than one year are entitled to written notice of at least one week.
- Employees who have worked at least one year are entitled to written notice of at least two weeks.
- Employees who have worked three years or more are entitled to written notice of at least one week for each year of employment, with a maximum required notice period of eight weeks.

Notice of termination applies to full-time, part-time and student employees.

Only after written notice has been given and the time of notice has expired can the employee be terminated. During the notice period, all benefits must be maintained.

If an employer terminates an employee without notice, the employer must provide pay in lieu of notice and maintain fringe benefits for the prescribed notice period. Full vacation pay entitlement must also be paid to the employee.

The employer is not required to give notice to an employee if:

- a) the employee was hired for a specified term or task, that is, a pre-arranged period of time or a specific unit of work that does not exceed 12 months;
- b) an employee is only “temporarily laid off” (see below);
- c) an employee is guilty of wilful misconduct, disobedience or wilful neglect of duty that has not been condoned;
- d) the work agreement is impossible of performance or frustrated by a fortuitous or unforeseeable event or circumstance, as in fire or flood, but not insolvency or bankruptcy;
- e) an employee is engaged in construction work at the site;
- f) an employee is terminated at retirement age as a result of an established company practice;
- g) an employee has refused reasonable alternative work (with the same employer);
- h) an employee has refused alternative work available through a “bumping” system;
- i) an employee does not return from lay-off within a reasonable time when requested to do so by the employer;

-
- j) an employee is employed under an arrangement where he or she may elect to work or not for a temporary period, when requested to do so.

Generally speaking, a "temporary lay-off" is a lay-off that lasts no more than 13 weeks in any 20-week period. A lay-off that lasts longer than a "temporary lay-off" is considered to be a termination.

In certain circumstances, the regulations provide that a lay-off may last more than 13 weeks and still be considered "temporary", such as where benefits are maintained during the lay-off. However, where this applies, the lay-off will be considered no longer temporary and will be deemed to be a termination if it lasts as long as 35 weeks in any 52-week period. Where this occurs and the employee is entitled to termination pay (pay in lieu of notice), an employee with recall rights can elect to take the termination pay and is then deemed to have abandoned the recall rights. Where an employee elects to retain recall rights, the employer must pay the termination pay to the director of Employment Standards to be paid to the employee when the recall rights expire or if the employee renounces these rights. If the employee accepts a recall, the money is returned to the employer.

Where an employer is terminating 50 or more employees in a four-week period, special notice requirements apply. The employer must also provide certain information to the Minister of Labour, and the notice to the employees does not begin until this is done. Employers contemplating a termination involving 50 or more employees are advised to contact the Ministry of Labour at telephone number (416) 326-7378.

12. Severance Pay

Where an employer's annual payroll is \$2.5 million or more, terminated individual employees with five or more years of employment are entitled to severance pay. Where the payroll is less than \$2.5 million, severance pay must be paid when 50 or more employees are terminated in a six-month period owing to the permanent discontinuance of all or part of a business at an establishment. (An establishment is defined as a location where the employer carries on business. If there is more than one location, the separate locations are considered to be one establishment if they are in the same municipality or if there are common bumping rights.)

Severance pay is calculated as one week's pay per year of employment, to a maximum of 26 weeks' pay. Part years must be recognized. For example, an employee with seven years and six months' employment would be entitled to 7½ weeks' severance pay. Severance pay is payable in addition to any right the employee may have to notice of termination or pay in lieu of notice.

"Termination" is defined differently for severance pay purposes than for notice purposes. Lay-offs are generally not considered terminations unless they last for at least 35 weeks in a period of 52 weeks.

Employees who are entitled to severance pay if they qualify include:

- i) regular full-time and regular part-time employees;
- ii) an employee who is terminated as a result of a strike or lock-out (except, in the case of a strike, where the employer proves that the permanent discontinuance of business was caused by the economic consequences of the strike);
- iii) an employee who is absent because of illness or injury if the contract of employment has not become impossible of performance or frustrated by illness or injury;
- iv) an employee who received or was entitled to receive notice of termination but who died before his or her employment was terminated or would have been terminated if notice of termination had been given;
- v) an employee who is terminated as a result of a permanent discontinuance, however caused;

-
- vi) an employee who is “bumped” out of his or her job;
 - vii) an employee who is terminated and retires on a reduced pension.

The following employees are not entitled to severance pay:

- i) an employee who refuses reasonable alternative employment with the employer (including an employee who refuses to exercise seniority rights to obtain reasonable alternative employment);
- ii) an employee who retires and receives an actuarially unreduced pension;
- iii) an employee who is terminated as a result of a strike where the employer proves that the permanent discontinuance of business was caused by the economic consequences of the strike;
- iv) an employee who is engaged in construction work at the site;
- v) an employee who is employed under an arrangement where he or she may elect to work or not when requested to do so;
- vi) an employee who is terminated because of wilful misconduct, disobedience or wilful neglect of duty;
- vii) an employee whose contract of employment has become impossible of performance or been frustrated because of illness or injury.

An employee who resigns after receiving notice of termination may still be entitled to severance pay if he or she has given the employer at least two weeks’ written notice of resignation and the last day of work falls within the statutory notice period.

Where an employee has recall rights, he or she may choose between retaining recall rights and receiving severance pay. If the choice is to receive severance pay, the employee loses the recall rights. If the choice is to retain recall rights, the employer must pay the severance pay to the director of Employment Standards. If the employee later accepts a recall, the severance pay will be paid back to the employer. The severance pay will be paid out to the employee if the employee later renounces the recall rights or if the recall rights expire.

An employer may apply to the Minister for approval to pay severance pay by instalments over a maximum period of three years.

13. Payments on Termination

Any monies to which an employee is entitled upon termination, other than pay in lieu of notice of termination and severance pay, must be paid within seven days of termination.

Pay in lieu of notice of termination and severance pay are allocated to the first two weeks following termination and must be paid in two instalments, one in each of those first two weeks. (An exception is when the employee has recall rights and elects to retain them following termination. See the severance pay and notice of termination section above.)

14. Employee Wage Protection Program (EWPP) Coverage

All employees covered by the *Employment Standards Act* are covered by the Program (See: General Coverage and Application).

The Program covers unpaid wages including overtime wages, commissions, vacation pay, termination pay and severance pay. It also covers certain other entitlements deemed to be wages under the Act.

The Program limits the total payment to each employee to the amount owed **up to** \$5,000.00 per employer.

The Program applies to moneys which became due on or after October 1, 1990, and the recovery is limited to the general limitation period under the Act.

Application

Where an employer owes money (see previous section) to an employee because

- the employer refuses to pay, or
- the employer is unable to pay because of an insolvency (e.g., bankruptcy or receivership), or
- the employer closed the establishment and the employee is unable to collect moneys due to him or her

the employee may file a Wage Protection claim under the Act in any of the offices of the Ontario Ministry of Labour listed on the back page of this Guide.

15. Agricultural Workers

Except for persons engaged in the harvesting of fruit, vegetables or tobacco, a person employed on a farm to produce eggs, milk, grain, seeds, fruit and vegetables, maple products, honey, tobacco, pigs, cattle, sheep or poultry, is exempt from the parts of the Act dealing with minimum wage, overtime pay, vacation pay, public holiday pay and hours of work.

The minimum wage for persons employed in the harvesting of fruit, vegetables or tobacco is \$6.70 an hour. (Effective January 1, 1994.)

The minimum wage for students employed in harvesting is \$6.25 an hour if the student is under 18 and works 28 hours or less per week during the school term or works full time during school holidays. (Effective January 1, 1994.)

The employee can be paid on a piece-work basis as long as it can be demonstrated that the piece-work rate is set at such a level that the average worker in the circumstances can earn at least the minimum wage. (This does not apply to students.)

The following schedule sets out the maximum amounts at which meals or room or both, or a house, may be valued for the purpose of determining if the *minimum* wage has been paid to the employee.

Room and Board

(Harvesting Employees)

	Jan. 1/94	Jan. 1/9
Room (weekly)		
— private	\$31.00	\$29.4
— non-private or shared	15.60	14.7
Meals (each)	2.50	2.3
(weekly maximum)	52.50	49.3
Rooms and Meals (weekly)		
— private	83.50	78.7
— non-private or shared	68.00	64.0

Housing (weekly)	Jan. 1/94	Jan. 1/93
— serviced (heat, light, water, gas or electricity provided at employer expense)	\$97.15	\$92.10
— unserviced	71.70	67.95

Employees employed for more than 13 weeks in harvesting are entitled to vacation pay of four per cent of their wages earned in harvesting. They are also entitled to public holidays with pay on New Year's Day, Good Friday, Labour Day, Thanksgiving Day, Christmas Day, Victoria Day, Canada Day and Boxing Day. However, the provisions respecting hours of work and overtime pay do not apply.

The regulations require the employer to maintain wage records, including the name and address of the worker, the hours worked each week, the wage rates and actual earnings of each employee.

16. Domestics and Nannies

Regulations under the *Employment Standards Act* were changed to provide improved employment standards for domestic workers in Ontario. The changes, which took effect October 1, 1987, involved the following employees:

- a) full-time domestics (employed by a household for more than 24 hours a week);
- b) part-time domestics (employed by a household for 24 hours a week or less);
- c) qualified nannies (with special training in child care or equivalent experience);
- d) full-time, live-in sitters (employed primarily to care for children but lacking special training).

The new regulations increased the protection available to domestic workers in the following areas:

- minimum wage
- overtime pay
- weekly free periods
- public holidays
- written job particulars
- employment records

If you are a domestic worker or someone who employs domestics make sure you know how the changes apply to you. (These changes are described in a special bulletin, which is available from your local area or district office of the Ministry of Labour. The addresses and telephone numbers of the district offices are listed at the end of this pamphlet.)

17. Lie Detectors

All employers, prospective employers and third parties acting for an employer are prohibited from using lie detector tests as a personnel screening device. Both employees and persons applying for employment have a right not to take, or even not to be asked to take, a lie detector test.

18. Retail Business Establishments — Sunday and Holiday Work

Who Is Covered

This Part of the *Employment Standards Act* applies to full-time and part-time employees as well as managers, non-sales staff and security staff in most retail business establishments in Ontario. It **does not** apply to employees of retail establishments that are open to the public primarily for educational, recreational or amusement purposes such as theme parks, zoos and tourist attractions. It also **does not** apply to employees of establishments in the hospitality industry such as restaurants, taverns, hotels and motels.

Right to Refuse Work

Any employee of a retail store who is covered by these provisions (see: Who is Covered), has the unconditional right to refuse Sunday and holiday work. The employee does not have to give any reason for refusing such work. Employees who have agreed to work on a Sunday or a holiday may subsequently choose not to work on such a day without any penalty, provided they have given the employer 48 hours notice prior to the first hour their Sunday or holiday work was to begin. This notice may be given verbally or in writing.

The right to refuse work does not extend to any other days; however, workers penalized for refusal to work on days such as their religious holidays may possibly have grounds for a complaint under the *Ontario Human Rights Code*.

Right to Continuous Period of Rest

All employees of retail business establishments (including those working on Sundays or during holidays) covered by this Part of the Act have a right to at least 36 continuous hours of rest in every seven days' period. The 36 hours are to be scheduled by the employer.

Protection from Reprisals:

The legislation prohibits employers from dismissing or penalizing employees for:

- refusing or attempting to refuse Sunday or holiday work,
- attempting to enforce his or her rights to 36 continuous hours of rest in every seven days,
- involvement in formal proceedings challenging a by-law which allows a store to stay open on a Sunday or a holiday.

For example, an employer is prohibited from dismissing, suspending, laying-off or otherwise disciplining employees for any of the reasons noted above. Nor can an employer reduce hours or rate of pay or adversely change job content or scheduling. The employer is also prohibited from attempting to intimidate, threaten, or coerce an employee in any way.

Should employers subject an employee to reprisals for any of the above reasons the employee can file a claim at the nearest office of the Ontario Ministry of Labour.

19. General Administration

An employee cannot be dismissed or suspended because of a garnishment order issued against the employee's wages.

An employer shall give an employee a wage *statement* showing what the wages are paid for, the rate, the gross wages, the amount of deductions and the net amount paid to the employee.

A *vacation pay statement* must be given the employee by the employer at the time the vacation pay is paid to the employee. This statement will show the time or work vacation pay is paid for, the total pay on which the vacation pay is being calculated, the amount of each deduction and its purpose, and the net amount of vacation pay being paid to the employee.

Records

Every employer shall make and keep in *Ontario* for 24 months after the work is done, *complete records concerning* the employee showing:

1. name and address;
2. date of birth if employee is a student under 18;
3. the hours worked each day and week;
4. rate and gross earnings;
5. the amount and purpose of each deduction;
6. any living allowance or other payment to which the employee is entitled;
7. the net pay;
8. any documents or certificates relating to pregnancy leave.

Further, an employer shall keep records in *Ontario* for five years that show the employee's name and address, original date of employment and wages paid for each period, and shall indicate vacations with pay or any payments made to the employee on account of vacation pay.

The employer is *not* required to record the daily or weekly hours of clerical or administrative employees who are paid by salary, except where such an employee works over eight hours per day or 44 hours per week.

Business Sale

When a business is sold, if the buyer does not continue the employment of the employee, the responsibility for notice of termination and severance pay *rests with the seller*.

An employee's time of service cannot be lost through change of ownership or sale of business. The employee's total length of employment will count when calculating holiday pay, vacation pay, pregnancy and parental leave, notice of termination and severance pay.

Other Provisions

Two or more businesses carrying on associated or related activities can, in some circumstances, be deemed to be one when determining the rights of an employee under this Act.

For the purposes of this Act, where the hourly rate of an employee is not readily determined, there are provisions within the Act that allow an employment standards officer to establish a basis for calculating the regular rate and overtime premiums. A week is defined as seven consecutive days.

Any provision of an employment agreement that gives to an employee a greater benefit than the minimum standards that apply in the *Employment Standards Act* will be the standard that applies to that employee.

Employment standards officers can assist employees to collect wages due, without limit on the amount owing that an employer can be ordered to pay. Administration costs of 10 per cent (minimum \$100) are added to each order to pay.

An officer, director or agent of a corporation who authorizes, permits or acquiesces in a contravention of the Act can be made liable for a claim for monies due its employees under the Act.

Section 59 of the *Employment Standards Act* provides that any person found in violation of the Act may, on conviction, be fined up to \$50,000 or imprisoned for up to six months, or both.

If the *employer* disagrees with an order of the director regarding the application of this Act, that decision may be appealed and reviewed by a referee appointed by the Minister of Labour.

An *employee* may appeal to the director if an employment standards officer refuses to issue an order against an employer on behalf of that employee, or the employee is of the view that an order does not include all of the wages or other entitlements to which he or she is entitled.

The director may require employers to post notices relating to this Act where they can be seen by employees.

No *deductions* can be made from an employee's wages except as required by law, or agreed to by the employee in *writing*. A written authorization must specify the amount to be deducted from the employee's wages.

An employee's written agreement for deductions from wages is *invalid* if it is for faulty workmanship or for cash shortages or loss of property where any other person has access to the cash or property.

No employee can waive his or her rights as provided by the *Employment Standards Act* (e.g. premium pay for overtime), and any attempt to do so is null and void.

Please note: this guide is provided for your convenience and information only. It is not a legal document. For further information and precise interpretation, please refer to the *Employment Standards Act* and Regulations. This guide supercedes previous editions.

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Ontario Ministry of Labour
Employment Practices Branch
40 Dundas St. W., 4th Floor
Toronto, Ontario
M5G 2C2



**Ontario
Ministry of
Labour**

Additional information may be obtained from the Ontario Ministry of Labour in the following cities:

Barrie

Central Area District Office
114 Worsley Street, 2nd Floor
L4M 1M1
Telephone: (705) 722-6145
1-800-461-4383*

Hamilton

Hamilton/Niagara Area Office
1 Jarvis Street, Main Floor
L8R 3J2
Telephone: (905) 577-4003
1-800-668-2777*

Halton

Hamilton/Niagara District Office
1 Jarvis Street, Main Floor
Hamilton, L8R 3J2
Telephone: (905) 577-6221
1-800-668-2777*

Kenora

Northern Area Satellite Office
Box 231, 808 Robertson Street, 2nd Floor
P9N 3X3
Telephone: (807) 468-2712
1-800-465-1104*

Kingston

Eastern Area District Office
115 Clarence Street, 3rd Floor
K7L 5N6
Telephone: (613) 545-0989
1-800-267-0915*

Kitchener

Western Area District Office
824 King Street West, 4th Floor
N2G 1G1
Telephone: (519) 744-8106
1-800-265-2469*

London

Western Area Office
130 Dufferin Avenue, 4th Floor
N6A 5R2
Telephone: (519) 439-3231
1-800-265-4707*

Mississauga

Central Area Office
The Kaneff Centre
1290 Central Parkway West
3rd Floor
L5C 4R3
Telephone: (905) 273-7890
1-800-268-9466*

Ottawa

Eastern Area Office
1111 Prince of Wales Dr.
Suite 200
K2C 3T2
Telephone: (613) 228-1299
1-800-267-1917*

Peterborough

Eastern Area District Office
815 High Street
Parklane Plaza
K9J 8J9
Telephone: (705) 876-1800
1-800-461-1425*

St. Catharines

Hamilton/Niagara District Office
Schmon Place, Suites 8 & 9
3350 Merrittville Hwy.,
Thorold
L2V 4Y6
Telephone: (905) 682-7261
1-800-263-7260*

Rexdale

Toronto Area District Office
2150 Islington Avenue, Suite 210
Etobicoke
M9P 3Y4
Telephone: (416) 314-4344
1-800-387-2965*

Richmond Hill

Central Area District Office
The Kaneff Centre, 4th Floor
1290 Central Parkway W.
Mississauga
L5C 4R3
Telephone: (905) 615-6563
1-800-268-2966

Sarnia

Western Area Satellite Office
700 Christina Street, N.
N7V 3C2
Telephone: (519) 336-1200
1-800-265-1416*

Sault Ste. Marie

Northern Area District Office
390 Bay Street, 3rd Floor
P6A 1X2
Telephone: (705) 949-3331
1-800-461-7268*

Scarborough

Toronto Area Office
2275 Midland Avenue
M1P 3E7
Telephone: (416) 326-7160
1-800-387-2965*

Sudbury

Northern Area Office
199 Larch Street, 6th Floor
P3E 5P9
Telephone: (705) 675-4455
1-800-461-4000*

Thunder Bay

Northern Area District Office
435 James Street South, Suite 115
P7E 6E3
Telephone: (807) 475-1691
1-800-465-5016*

Timmins

Northern Area District Office
273 Third Avenue, 2nd Floor
P4N 1E2
Telephone: (705) 267-6231
1-800-461-9847

Toronto Downtown

Toronto Area District Office
123 Edward St., 4th Floor
M5G 1E2
Telephone: (416) 326-7160
1-800-387-2965

Whitby

Peterborough Satellite Office
209 Dundas Street East, Suite 204
L1N 7H8
Telephone: (905) 666-4688
1-800-263-1195

Windsor

Western Area District Office
500 Ouellette Avenue
Suite 305
N9A 1B3
Telephone: (519) 256-8277
1-800-265-5140

TDD

Ministry of Labour
Telephone: (416) 326-7821
Disability Issues Office
Telephone: 1-800-378-4456*

(* toll free number)